

ORIGINAL

D & F  
C/M

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
JOHN DURSO, et. al.,

Plaintiffs,  
-against-

EAST TREMONT FOOD CORP.,

Defendant.  
-----x

**MEMORANDUM AND ORDER**

No. 06-CV-0051 (FB) (JO)

*Appearances:*

*For the Plaintiff:*

AMIE RAVITZ, ESQ.

Friedman & Wolf

1500 Broadway, Suite 2300

New York, NY 10036

**BLOCK, Senior District Judge:**

On March 26, 2007, Magistrate Judge James Orenstein issued a Report and Recommendation ("R&R") recommending that the Court "vacate its earlier default judgment and instead dismiss the case with prejudice" because plaintiffs have failed to establish any damages due to them. *See* Docket Entry # 11 (R&R), at 1. The government served a copy of the R&R on defendant at their last known address on March 29, 2007, *see* Docket Entry #16 (Certificate of Service), making objections due by April 17, 2006. *See* Fed. RR. Civ. P. 6(a), 6(e). The R&R advises that "[f]ailure to file objections within this period waives the right to appeal the District Court's order." R&R at 11. To date, no objections have been filed.

Where, as here, clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R & R without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758,

766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

As no error appears on the face of the Magistrate Judge Orenstein’s R&R, the Court adopts it without *de novo* review. The Clerk is directed to enter judgment in accordance with the R&R.

**SO ORDERED.**

/signed/  
\_\_\_\_\_  
FREDERIC BLOCK/  
Senior United States District Judge

Brooklyn, New York  
April 19, 2007